



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2017 Biennium

<b>Bill #</b>	HB0607	<b>Title:</b>	Revise anti-corruption and state employee protection laws
<b>Primary Sponsor:</b>	Wagoner, Kirk	<b>Status:</b>	As Introduced

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

### **FISCAL SUMMARY**

	<b><u>FY 2016 Difference</u></b>	<b><u>FY 2017 Difference</u></b>	<b><u>FY 2018 Difference</u></b>	<b><u>FY 2019 Difference</u></b>
<b>Expenditures:</b>				
General Fund	\$84,800	\$84,800	\$86,072	\$87,363
Proprietary	\$84,800	\$84,800	\$86,072	\$87,363
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
Proprietary	\$84,800	\$84,800	\$86,072	\$87,363
<b>Net Impact-General Fund Balance:</b>	<u>(\$84,800)</u>	<u>(\$84,800)</u>	<u>(\$86,072)</u>	<u>(\$87,363)</u>

**Description of fiscal impact:** HB 607 transfers enforcement authority for ethics complaints from the Commissioner of Political Practices to the Department of Justice. This will result in additional general fund and proprietary fund expenditures to support increased workload within the Department of Justice Agency Legal Services.

### **FISCAL ANALYSIS**

#### **Assumptions:**

#### **Commissioner of Political Practices (COPP)**

- HB 607 transfers jurisdiction of ethics complaints from the COPP to the Department of Justice. It has no fiscal impact on the COPP because the staff who are responsible for dealing with ethics complaints have multiple other duties and would still have full-time job responsibilities conducting the other operations and responsibilities of the office.

#### **Department of Justice (DOJ)**

- This bill directs ethics complaints to the Department of Justice. It is estimated that legal services will be procured from DOJ's Agency Legal Services associated with this function. The DOJ estimates 800 hours will be needed to work on active complaints at an hourly rate of \$106 per hour for a total cost of \$84,800 per year.

3. Agency Legal Services is a proprietary funded operation. The costs of the hours worked on cases are passed through to clients. In this case, the client is another division of DOJ. The DOJ will need general fund to pay for the Agency Legal Services charges. Agency Legal Services will in turn record the expenditures in the proprietary fund.
4. Costs are inflated at 1.5% per year in the 2019 biennium.

**Legislative Branch**

5. Section 10 of HB 607 requires the DOJ to provide a semi-annual report to the Legislative Services Division on complaints filed with the DOJ. Subsection 3 of section 10 requires the Legislative Services Division to compile the reports and send a semi-annual report by e-mail to every legislator with a known e-mail address.
6. It is unknown how many complaints will be reported to the Legislative Services Division. For the purposes of this fiscal note, it is assumed that these additional requirements could be absorbed within existing funds.
7. HB 607 is one of several bills seeking to add to the duties of the Legislative Services Division. The fiscal note for each bill is prepared based on the effect of the individual bill. However, when viewed as a package, the cumulative effect of passage of more than one bill will require additional analysis and may require additional resources.

**Public Employee Retirement System (PERS)**

8. HB 607, Section 8, provides that public retirement benefit payments may be used to pay fines and restitution. Section 8 of HB 607, as written, could result in the retirement plans no longer being qualified.

**Teachers' Retirement System (TRS)**

9. The programming costs associated with implementing Section 8 of HB 607 are assumed to be minimal and could be absorbed in TRS's normal operating budget.

**Department of Justice**

	<b><u>FY 2016 Difference</u></b>	<b><u>FY 2017 Difference</u></b>	<b><u>FY 2018 Difference</u></b>	<b><u>FY 2019 Difference</u></b>
<b><u>Fiscal Impact:</u></b>				
<b>FTE</b>	0.00	0.00	0.00	0.00
<b><u>Expenditures:</u></b>				
Personal Services (ALS)	\$84,800	\$84,800	\$86,072	\$87,363
Operating Expenses (to ALS)	\$84,800	\$84,800	\$86,072	\$87,363
<b>TOTAL Expenditures</b>	<b><u>\$169,600</u></b>	<b><u>\$169,600</u></b>	<b><u>\$172,144</u></b>	<b><u>\$174,726</u></b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$84,800	\$84,800	\$86,072	\$87,363
Proprietary (06)	\$84,800	\$84,800	\$86,072	\$87,363
<b>TOTAL Funding of Exp.</b>	<b><u>\$169,600</u></b>	<b><u>\$169,600</u></b>	<b><u>\$172,144</u></b>	<b><u>\$174,726</u></b>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
Proprietary (06)	\$84,800	\$84,800	\$86,072	\$87,363
<b>TOTAL Revenues</b>	<b><u>\$84,800</u></b>	<b><u>\$84,800</u></b>	<b><u>\$86,072</u></b>	<b><u>\$87,363</u></b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$84,800)	(\$84,800)	(\$86,072)	(\$87,363)
Proprietary	\$0	\$0	\$0	(\$0)

**Technical Notes:****Retirement Systems (TRS and MPERA)**

1. Section 8 appears to be in violation of federal pension trust requirements recognized in Art. VIII Sec 15 of the Montana Constitution and codified in the Montana Code Annotated. Sections 19-2-505(2) and 19-20-502(2), MCA, recognize that pension plan assets must be used for the exclusive benefit of members and their beneficiaries. Sections 19-2-1004 and 19-20-706, MCA, codify the federal government's anti-alienation requirements preventing execution, garnishment, or attachment of pension assets and further state that the benefits are not assignable except as provided in Title 19, Chapters 2 and 20.
2. Exceptions to these requirements exist for certain federal court actions but neither MPERA nor TRS are aware of any exceptions related to state process. Violation of these requirements may result in a determination that the pension systems are no longer qualified under federal tax laws.
3. It is unclear how TRS or MPERA would administer section 8 of HB 607 if it were to become law. There are no guidelines pertaining to the length of the payment schedule for a fine or restitution nor are there any guidelines regarding the amount of benefit reduction that would be allowable under HB 607.

**Department of Military Affairs**

4. HB 607 repeals 10-1-111, MCA which provides immunity from civil liability while Montana National Guard soldiers are considered employees of the federal government. The Montana National Guard performs a uniquely federal mission and role except when ordered into state service. The federal government has established comprehensive administrative programs to compensate military forces for injuries that they may incur while performing training for the nation's defense and to compensate those who make claims for death, injury, or damage to real or personal property arising out of Montana National Guard activities, under the Federal Tort Claims Act. Repealing this statute could cause a fiscal impact to the department, but that impact cannot be quantified.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*